IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 943 of 2003
In
SPECIAL CIVIL APPLICATION No. 8189 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORP. - Appellant(s)
Versus
A M SHAIKH - Respondent(s)

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Appearance :
MR YOGESH S LAKHANI for Appellant(s) : 1,
MR KISHOR M PAUL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 26/06/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. Instant intra-court Appeal under Clause 15 of

the Letters Patent is directed against the judgment and order dated 11.3.2002 rendered in Special Civil Application no. 8189 of 2001 by the learned Single Judge of this Court, by which the prayer to issue a writ in the nature of mandamus or a writ or certiorari or any other appropriate writ, order or direction to quash and set aside the judgment and award dated 8.8.2001 rendered in Reference IT No. 456 of 1998 by the Industrial Tribunal, Nadiad, has been negatived, and thereby, the petition filed by the appellant to quash and set aside the award passed in favour of the respondent workman has been dismissed.

2. The Respondent workman was appointed as Watchman w.e.f. 3.4.1979 and he continued on the said post up to 8.2.1995. Thereafter his services got terminated, therefore the Respondent workman raised the industrial dispute against the order of termination. The Labour Court quashed and set aside the said order of termination and ordered to reinstate the respondent workman in service with all full back-wages against which the Appellant filed writ petition before this Court, which was dismissed, and the order directing the appellant to reinstate the respondent workman with continuity of service with full back-wages has reached to finality and has become final.

3. Thereafter the respondent workman raised

industrial dispute in respect of regularization of his services and to get difference of arrears of pecuniary benefits available to the regular employees. The case of the respondent workman as averred in the statement of claim and briefly stated, was that the respondent workman was working as reliever watchman at Tarapur depot since 1978 and he had worked for more than 180 days, and in every month the respondent workman had worked for 20-25 days and he was working on permanent post and though the post was vacant, service of the respondent workman was not regularized with a view to deprive him of the benefit of the regular employees and to victimize the respondent workman. It was further case of the respondent workman that he had been working as reliever watchman since 15 years and that the said act of the Corporation is against the rules, byelaws and settlement which the Corporation has entered into with the recognized Union, whereby the employees who have completed 180 days of service were to be placed on time scale and all the benefits including the pay, dearness allowance, house rent allowance, provident fund, LTC, bonus, uniform, available to the regular employees, are granted to the employees placed on time scale. It was further case of the respondent workman that the term “reliever watchman” is bogus and sham, and this term has been used in order to deprive the benefit of regularization to the respondent

workman. The post of watchman was not filled-in by the Corporation since years and number of posts were vacant since regular watchman had retired / died. On the aforesaid premises, it was prayed that the respondent workman should be placed on time scale from the date on which he had completed 180 days of service with arrears of pecuniary benefits, for which he raised the industrial dispute.

4. The Appellant – Corporation contested the reference made by the conciliation officer by filing written statement (exh.14) inter alia contending that the respondent workman on his own, in his own handwriting, on 2.4.1979, applied to appoint him as reliever watchman, when regular watchman remained on weekly leave or yearly leave, on purely ad hoc basis. Thus, the respondent workman was appointed as reliever and not as regular employee, and he had accepted the said appointment by letter dated 16.6.1979. It was further contended that the regular employees were appointed only after publication of advertisement through employment exchange, and the same was scrutinized by Divisional Selection Committee, as per the rules of the Corporation. The respondent workman was never appointed as regular employee and no such procedure was adopted in his appointment. It was also the case of the appellant that the person appointed as reliever was entitled to apply for the post on completion of one year of service

and he was appointed on the basis of his merits. As per the order passed by the selection committee, employees were to be placed on time scale on completion of 180 days of service and the respondent workman was never appointed by Divisional Selection committee, and hence, the provisions of the settlement were not applicable to him.

5. Lastly it was also contended that looking to the financial condition of the Corporation, the head office has regulated and stopped the appointment of watchman, and the workman, after accepting his service as purely reliever watchman, has raised the industrial dispute in order to get back door entry as regular employee, and therefore, it was prayed to dismiss the reference.

6. The Industrial Tribunal, after considering the evidence adduced by the parties and the documents and the submissions advanced at the bar, came to the conclusion that the respondent workman was working as watchman since 3.4.1979 and he had completed 240 days in the preceding years. Therefore, he was entitled to be continued as permanent and the reference was made on 14.10.1994 with a prayer to make him permanent. On the aforesaid finding, the Industrial Court accepted the reference and directed the appellant to make him permanent w.e.f. 14.10.1994 with all consequential service

benefits as well as monetary benefits and to pay arrears within 10 days.

7. Aggrieved thereby, the appellant filed writ petition, being Special Civil Application No. 8189 of 2001 before this Court. The learned Single Judge of this Court vide order dated 11.3.2002, considering the judgment of the Apex Court held that the Tribunal was right in making the award in question, which was not suffering from the vice of jurisdictional error or procedural material irregularity and, therefore, the award in question does not require any interference of the Court in a petition filed under Article 227 of the Constitution of India. On the aforesaid premises, the learned Single Judge dismissed the petition, giving rise to the instant Letters Patent Appeal at the instance of the employer – Gujarat State Road Transport Corporation.

8. Mr. Yogesh Lakhani, learned advocate for the appellant – Corporation has raised the following contentions:

(a) The learned Single Judge has not taken into consideration the fact that terms of settlement were applicable only to the regular employees of the Corporation and as far as the respondent workman is concerned, he was working as off day reliever and hence the benefits were not available to him.

(b) The respondent workman had not undergone the selection process.

(c) There was a ban on recruitment pursuant to the economic measures by State Government.

(d) If the respondent workman was extended the benefit of permanency, the competent candidates for the said post would be deprived of the job as the concerned workman was not a selected employee.

9. On the aforesaid grounds, Mr. Yogesh Lakhani, learned advocate for the appellant, submitted that the impugned judgment and order passed by the learned Single Judge, confirming the award passed by the Labour Court, deserves to be quashed and set aside by allowing this appeal. He, therefore, urged to allow this Appeal.

10. Per contra Mr. Kishore M. Paul, learned advocate for the respondent workman, supported the impugned judgment and order, as, according to him, no illegality or irregularity is committed by the learned Single Judge in confirming the award passed by the Industrial Tribunal. Besides this, he has also raised the contention that the learned Single Judge has considered the petition as a petition under Article 227 of the Constitution of India, and, therefore, this Appeal under Clause 15 of the Letters Patent is not maintainable. On merits also the Industrial Court had dealt with all the aspects and had

come to the conclusion that the respondent workman had completed 240 days in all the preceding years, therefore, the respondent workman was entitled to become permanent. He, therefore, urged that the impugned judgment does not call for any interference in this Letters Patent Appeal. On the contrary it requires affirmation. Therefore, he prayed to dismiss the appeal.

11. We have considered the submissions advanced by the learned advocates appearing for the parties. We have also perused the impugned judgment and order rendered by the learned Single Judge in Special Civil Application No. 8189 of 2001, documents forming part of the petition, and also the impugned award passed by the Industrial Tribunal, Nadiad.

12. So far as the factual matrix is concerned, there is no dispute that the respondent workman was appointed w.e.f. 3.4.1979 as a daily rated workman on the post of watchman and thereafter he continued up to 8.2.1985 and thereafter his services were terminated. He, therefore, raised industrial dispute challenging the order of termination. The Industrial Court directed the appellant to reinstate the respondent workman on the same post. Thereafter the respondent workman again raised industrial dispute praying to regularize him and to give appointment on permanent post as he had completed 240 days in

all the preceding years.

13. On a perusal of the impugned judgment it is seen that the learned Single Judge, on re-appreciation and re-evaluation of the evidence adduced by both the parties before the Industrial Court, affirmed the said findings. Therefore, according to us, there are concurrent findings of fact recorded by both the Courts below in favour of the respondent workman, which, normally, cannot be upset in intra-court appeal filed under Clause 15 of the Letters Patent unless it is shown that the findings recorded by both the courts below are against the evidence on record, capricious or perverse, requiring interference of the Court in intra-court appeal under Clause 15 of the Letters Patent. Besides this, we have also noticed that the learned Single Judge has considered the petition filed by the appellant as a petition under Article 227 of the Constitution of India and when the petition was filed under Article 227 of the Constitution of India, the order passed therein is not amenable to appeal under Clause 15 of the Letters Patent and therefore also the appeal is not maintainable.

14. Lastly, it has been brought to our notice by Mr. Kishore M. Paul, learned advocate for the respondent workman that the respondent workman has retired w.e.f. 5.8.2006 and therefore he has

worked up to 5.8.2006 and as such, also he is entitled to all monetary benefits. Mr. Kishore M. Paul, learned advocate has also placed on record the order dated 29.8.2006 passed by the Divisional Controller, Gujarat State Road Transport Corporation, Nadiad wherein it is stated that the respondent workman has retired w.e.f. 5.8.2006.

15. In aforesaid view of the matter, we find ourselves in complete agreement with the findings, ultimate conclusion and the resultant order passed by the Industrial Tribunal, which is affirmed by the learned Single Judge of this Court in a petition filed under Article 227 of the Constitution of India, and according to us, no other conclusion is possible on the facts and in the circumstances emerging from the record of the case, requiring our interference in this appeal filed under Clause 15 of the Letters Patent. On the contrary it is required to be reaffirmed, and accordingly, we reaffirm the order passed by the Industrial Tribunal, which is affirmed by the learned Single Judge.

16. Seen in the above context, this intra-court appeal lacks merit and deserves to be dismissed.

17. For the foregoing reasons, the appeal fails and accordingly it is dismissed with no order as to costs.

(A.M.Kapadia,J)

(H.N.Devani,J)

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